IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 733 of 1990
With
FIRST APPEAL No. 734 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

NEW INDIA ASSURANCE CO. LTD - Appellant(s)
Versus
NURIBEN WD.O ABDULBHAI JAMALBHAI BADARPURA & 10 - Defendant(s)

==========

Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 2,4 - 6,9 - 10.
MR AN PATEL for Respondent(s) : 3,
NOTICE UNSERVED for Respondent(s) : 7,
MR DAXESH T DAVE for Respondent(s) : 8,
MR HJ BHATT for Respondent(s) : 11,
MR MAULIK J SHELAT for Respondent(s) : 11,

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 09/08/2007

ORAL JUDGMENT

Shri Rajni H. Mehta, learned counsel for the appellant; Shri A.N. Patel, learned counsel for the Respondent No.3 in First Appeal No. 733/90; Shri Maulik J. Shelat, learned counsel for Respondent No.11 in First Appeal No. 733/90. Shri Rajni H. Mehta, learned counsel for the appellant in First Appeal No. 734/90; Shri Maulik J. Shelat, learned counsel for the respondent no.7; none for others though served.

2. The appellant-New India Assurance Company Ltd., being aggrieved by the judgment and award dated 5.1.90 passed by the learned MAC Tribunal [Main] Surat, in MAC Petitions No. 776 of 1985 and 651 of 1985 is before this Court with a submission that the learned Tribunal was unjustified in holding the Insurance Company liable to the extent of 50%.

3. Short facts necessary for disposal of the present appeals are that there was an accident between the two vehicles bearing No. GRW 597 and GTC 5840. Vehicle No. GRW 597 was insured with Oriental Insurance Company while vehicle No. GTC 5840 was insured with the appellant company. The

appellant company submitted before the Tribunal that vehicle no. GTC 5840 was not insured with them, therefore, they could not be held liable. The claimants produced on records a panchnama prepared on the spot immediately after the accident. The said panchnama prepared by the panchas clearly mentions that vehicle no. GTC 5840 was insured with the present appellant New India Assurance Company under policy no. 323176 under which the vehicle was insured up to 26.11.85. The Insurance Company examined one of their employees who came before the Tribunal and submitted that despite their best efforts, they could not trace the policy from anywhere at their Surat office. The learned Tribunal, relying upon the panchnama observed that if the papers were not a available at the time of the panchnama, neither policy number nor name of the Insurance Company could be given in the panchnama. It also held that the Insurance Company could not successfully prove that the vehicle was not insured with them. It accordingly held the Insurance Company was

liable to the extent of 50% in view of its earlier findings that each of the vehicle contributed to the accident to the extent of 50%.

4. Shri Mehta, learned counsel for the appellant submitted that the Insurance Company had produced the best evidence available with it and if they were saying that the vehicle was not insured with them and no copy of the policy was available, then, the Tribunal could not hold otherwise. Shri A.N. Patel, learned counsel for the respondent no.3, however, submitted that the Insurance Company ought to have produced the register of policies to show to the Tribunal that either policy no. 323176 was not issued in favour of anybody or in the alternative, it was issued in favour of someone else. He submits that in view of the positive evidence produced on the records, the Tribunal was justified in holding the appellant company liable.

5. The positive evidence, which has come on the records is in the form of panchnama prepared on the spot, which contains name of the Insurance

Company and the policy number. Unless such papers were available at the time of the accident, the panchas were not required to mention the name of the Insurance Company or the policy number. Details set out in the panchnama would clearly show that the name of the Insurance Company and the policy number were brought to the notice of the panch witnesses from the document which was made available on the spot. Against this,the Insurance Company has brought negative evidence on the records to show that they had no copy of such policy. Unfortunately, they did not produce register of policies nor the register containing number and details of the insured and the period of validity of the policy. They could have successfully proved by producing such register that either policy was not issued or if was issued, it was in favour of someone else.

6. The learned Tribunal was not wrong in holding the appellant Insurance Company liable. I find no reason to interfere.

7. Both the appeals deserve to and are accordingly

dismissed. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

pirzada/-